

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re

CLASSMATES.COM CONSOLIDATED
LITIGATION

CASE NO. C09-00045-RAJ

DECLARATION OF MICHAEL
KRAUSS IN SUPPORT OF MOTION
FOR SANCTIONS

CLASS ACTION

**NOTED ON MOTION CALENDAR:
Friday, February 3, 2012**

Michael I. Krauss, hereby declares as follows:

1. I am the objector in this case. I teach torts, products liability, legal ethics, and jurisprudence at George Mason University Law School.

2. I've known Ted Frank for several years through our work on the same legal blog, Point of Law. I am a Facebook friend of his, and was thus aware of his work representing objectors to unfair class action settlements. Along with Mr. Frank, I was elected to the American Law Institute in 2008.

3. I am appalled and offended at class counsel's baseless and frivolous attacks on my ethics. In my view, these attacks, made without any foundation, are in flagrant violation of Rule 3.1 of the ABA's Model Rules of Professional Responsibility.

4. I've independently spoken out about unfair class action settlements for years before the Center for Class Action Fairness existed. For example, in 2007, I was one of twenty academic co-signers in a letter to the ABA asking them to issue a legal opinion holding "kicker" clauses

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1 unethical. (This is the same position that the *Lonardo* court criticized Mr. Frank for arguing, the
2 same position adopted by the *Bluetooth* court and this Court, and the same position that resulted in
3 a modification of the second settlement to remove the “kicker” clause, making an additional
4 \$1.05 million available in a common fund for the class.) Mr. Frank has told me that that
5 September 17, 2007, letter was the inspiration for his litigation activism on the subject.

6 5. I support some types of tort reform, and oppose other types of tort reform. In any
7 case, I fail to see how my political views are relevant to my fee request. Nothing in Rule 23 or
8 legal precedent says that people who support some kinds of tort reform are not entitled to object to
9 abusive class action settlements or recover fees for such objections when they result in millions of
10 dollars of class benefits. In my opinion, class counsel’s concern about tort reform would be better
11 directed to working against the abusive and unethical settlements they propounded in which they
12 would collect multiples of what their putative clients would receive.

13 6. On the morning of September 30, 2010, I received notice of the first settlement in
14 this case. I thought the settlement offensive, unethical, and unfair, and wanted to object. I
15 immediately thought of Ted Frank, and, within 30 minutes of receiving the notice, I contacted
16 Mr. Frank to ask him to help me object to this settlement. No one paid me or asked me to contact
17 Mr. Frank; I did so of my own volition. I, not Mr. Frank, initiated this conversation.

18 7. Mr. Frank expressed interest in discussing the issue further. We spoke on the
19 telephone the morning of October 1, 2010, and Frank offered to represent me *pro bono*. Mr. Frank
20 did not offer me any compensation to do so; in fact, he informed me that I would be able to make
21 more money working with a professional objector willing to withdraw my objection in exchange
22 for cash, and that he would only represent me if he knew that that was not my motive. We agreed
23 that our shared goal was to strike down an unfair settlement, rather than to personally profit, and I
24 agreed to have Mr. Frank represent me.

25 8. We each independently worked to find local counsel.
26

1 9. I am a sophisticated expert on legal ethics capable of protecting myself in an
2 attorney-client relationship. The terms of my retention of Mr. Frank were at my offer (which
3 Mr. Frank accepted), and I am satisfied with them. I am satisfied with and grateful for
4 Mr. Frank's *pro bono* representation and, in my opinion, he has complied with both the letter and
5 the spirit of the ethics rules in that representation. He has not sought any money from me or
6 misled me about his *pro bono* representation; he has consistently kept me informed of the status of
7 the litigation, and sought my input on briefing and strategy. If I thought Mr. Frank violated any
8 ethics rules in his representation of me, I would not hesitate to address the matter with him;
9 indeed, he modified his form retainer agreement at my suggestion.

10 10. My past work with the Heritage Foundation was not conditioned on my willingness
11 to object in this case. I am doing no current work for Heritage, and I never consulted with them on
12 this issue.

13 11. My past work with the Competitive Enterprise Institute was not conditioned on my
14 willingness to object in this case. I am doing no current work for CEI, and I never consulted with
15 them on this issue.

16 12. My past work with the Acton Institute was not conditioned on my willingness to
17 object in this case. I am doing no current work for Acton, and I never consulted with them on this
18 issue.

19 13. My past work for the Institute for Justice was not conditioned on my willingness to
20 object in this case. I am doing no current work for the Institute, and I never consulted with them
21 on this issue.

22 14. When Cato retained me to write for them in 2001, that agreement was not
23 conditioned on my willingness to object nine years later to a class action settlement that had not
24 yet been made. I am doing no current work for Cato, and I never consulted with them on this
25 issue.

1 15. My work with the Federalist Society is not conditioned on my willingness to object
2 in this case. I never consulted with the Federalist Society on this issue and do not intend to do so.

3 16. When George Mason University Law School hired me in 1987, and gave me tenure
4 that same year, that agreement was not conditioned on my willingness to object decades later to a
5 class action settlement that had not yet been made against a corporate entity that did not yet exist.
6 I never consulted with GMU on this issue and do not intend to do so.

7 17. I do not have any authority regarding GMU Law School fundraising, and do not
8 keep track of who has given money to the law school. I do not know who these donors are. I have
9 never let donors' identities affect my academic independence.

10 18. Donors Trust has not paid me to participate in this litigation, nor has it ever given
11 me any instructions on how to direct the litigation in any way. At all times, Mr. Frank has left
12 critical litigation decisions up to me, and let me know that his fiduciary duty to me came before
13 any relationship he had with any third party. Indeed, Mr. Frank told me that he would terminate
14 his contract with Donors Trust if that contract created any conflict of interest between my
15 litigation goals and his ability to represent me.

16 19. The subpoenas issued would have required me to devote several hours compiling
17 responses to them, though none of the information I would have been required to produce would
18 have been material to the litigation or my objection.

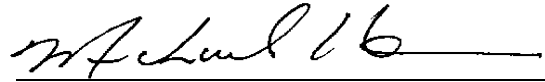
19 20. I have no contractual relationship with Donors Trust or with the Center for Class
20 Action Fairness. I did not even know that Donors Trust had a relationship with the Center until
21 Mr. Frank informed me about the subpoenas and consulted with me about the appropriate
22 litigation strategy. I know nothing about the structure or the governance of Donors Trust.

23 21. If class counsel are allowed to harass me with intrusive and irrelevant subpoenas, I
24 will refrain from objecting to illegitimate class action settlements in the future. For this reason, I
25 hope that the court issues an appropriate sanction sufficient to deter such abusive subpoenas in the
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1 future. If nothing else, sanctions are appropriate to deter the abusive and unethical attacks on my
2 character exhibited in class counsel's response to my motion for sanctions.

3 I declare under penalty of the laws of perjury that, to the best of my knowledge,
4 information and belief, the foregoing is true and correct.

5 EXECUTED this 3rd day of February, 2012, at Arlington, Virginia.

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8 Michael I. Krauss
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 3rd day of February, 2012.

/s/ Marcia A. Ripley

Marcia A. Ripley